

Message Text

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73

ACTION ACDA-10

INFO OCT-01 EUR-12 IO-13 ISO-00 AF-08 ARA-06 CIAE-00

DODE-00 EA-07 PM-04 H-02 INR-07 L-03 NASA-01 NEA-10

NSAE-00 NSC-05 OIC-02 SP-02 PA-01 PRS-01 OES-06 SS-15

USIA-06 SAJ-01 /123 W

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R 261540Z JUL 76

FM USMISSION GENEVA

TO SECSTATE WASHDC 1435

INFO AMEMBASSY BONN

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY OTTAWA

AMEMBASSY THE HAGUE

AMEMBASSY STOCKHOLM

AMEMBASSY ROME

USMISSION USUN NEW YORK

USMISSION NATO

USDEL SALT TWO GENEVA

ERDA HQ WASH

ERDA GERMANTOWN

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E.O. 11652: N/A

TAGS: PARM, CCD

SUBJECT: CCD - NETHERLANDS QUESTION ON LEGAL EFFECT OF AMENDMENTS
TO ENMOD ILLUSTRATIVE LIST AFTER ENTRY INTO FORCE
OF CONVENTION

1. DURING JULY 23 ENMOD INFORMAL MEETIGN, NETHERLANDS
REP (VAN DER KLAUW) ASKED WHAT WOULD BE THE LEGAL AND
PRACTICAL EFFECT ON A TREATY PARTY OF AN AMENDMENT TO THE
TREATY WHICH SUCH PARTY DID NOT ACCEPT. SPECIFICALLY,
HE MENTIONED AN AMENDMENT WHICH WOULD INCLUDE "DIVERSION
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OF RIVERS" IN ART II AND ASKED TO WHAT DEGREE IT WOULD BE

BINDING IF THE COMPLAINING PARTY HAD ACCEPTED THAT AMENDMENT BUT THE PARTY ACCUSED OF THE VIOLATION HAD NOT ACCEPTED IT. UK REP (TAYLOR) ALSO DECLARED INTEREST IN THE ANSWER TO THE NETHERLANDS QUESTION.

2. US REP (MARTIN) STATED THAT HE WOULD REFER THE GENERAL QUESTION TO LEGAL AND TREATY EXPERTS IN WASHINGTON. HOWEVER, VAN DER KLAUW HAD REFERRED TO THE EXAMPLES IN ART II IN A MANNER WHICH SEEMED TO IMPLY A VIEW ON THE NATURE OF THESE EXAMPLES WHICH THE US DOES NOT SHARE. THE US POSITION IS THAT THE EXAMPLES ARE ILLUSTRATIVE RATHER THAN EXHAUSTIVE, AND THAT THEY DO NOT AFFECT THE SCOPE OF THE PROHIBITION. IF THE ACTION FALLS WITHIN THE MEANING OF ARTICLE I, HE STATED, IT WOULD BE PROHIBITED, REGARDLESS OF WHETHER OR NOT IT WAS LISTED AMONG EXAMPLES.

3. ACTION REQUESTED: LEGAL GUIDANCE IN RESPONSE TO THE NETHERLANDS QUESTION. ABRAMS

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Message Attributes

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Margaret P. Grafeld
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04 MAY 2006

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